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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
Annual Assessment of the Status )  
of Competition in the Market for ) CS Docket No. 96-133  
the Delivery of Video Programming )

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REPLY COMMENTS OF AMERITECH NEW MEDIA, INC.

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Ameritech New Media, Inc. respectfully offers the following brief reply to the initial comments on the Notice of Inquiry ("NOI") released in the above-captioned docket on June 13, 1996.

In the NOI, the Commission invites commenters "to submit data, information, and analysis regarding the cable industry, existing and potential competitors to cable systems, and the prospects for increased competition in markets for the delivery of video programming."<sup>1</sup> The Commission will use the information it collects in this docket to prepare its annual report to Congress on the status of competition for the delivery of video programming.<sup>2</sup>

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<sup>1</sup> NOI at par. 2.

<sup>2</sup> 47 U.S.C. Section 628(g).

In its initial comments, Ameritech New Media (a) identified those areas in the midwest region where Ameritech New Media has been awarded a cable franchise during the last year,<sup>3</sup> (b) described the response of some cable competitors to stymie Ameritech New Media's efforts to provide customers with a choice for satisfying their demand for video programming, (c) explained the limits of the Commission's program access rules when it comes to ensuring that new entrants will have reasonable access to comparable programming, and (d) highlighted how the program access problem might be exacerbated by exclusive distribution arrangements with broadcasters who are not obliged to follow the Commission's program access rules.

The comments filed by some parties, principally incumbent cable operators and their trade associations, suggest that there is today substantial competition in the video distribution marketplace. Nothing could be further from the truth. The fact of the matter is that little competition has evolved in the video distribution marketplace during the 4+ years that have elapsed since the Cable Act of 1992 was enacted into law. As the initial comments show,<sup>4</sup> to the extent such competition is present, it comes in the form of wireless applications. The initial comments also show that where

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<sup>3</sup> Ameritech New Media has not be purchasing existing cable systems as some claim (Gen. Inst. at 3) but is deploying a new system to compete in each community where it has been awarded a franchise.

<sup>4</sup> SBCA at App; WCAI at 3-4; Direct TV at 4; RCN at 3; OpTel at 2; HBO at 3-4; TW at 8-9; NCTA at 5, 9-10.

competition begins to emerge, the incumbent cable operators have moved aggressively to preserve their monopoly position.<sup>5</sup>

There are two important steps the Commission can take to increase the level of competition in the video distribution marketplace. First, the Commission should recognize that given how it has interpreted its program access rules,<sup>6</sup> new multichannel video program providers ("MVPDs") may not have reasonable access to programming which is comparable to the incumbent cable operator who has entered into an exclusive distribution contract for such programming. The Commission must take this fact into account when deciding whether comparable programming is available in an area where the incumbent seeks relief from rate regulation. The Commission also must note the consequences these exclusive distribution contracts have in the marketplace and recommend to Congress that the law be clarified, or if need be changed, to ensure that new MVPD's have reasonable access to video programming that today is available on an exclusive basis only to certain incumbent cable operators. In addition, the Commission should recommend to Congress that the program access provisions enacted in the 1992 Cable Act be expanded to recognize, and nullify, the ability of incumbent

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<sup>5</sup> WCAI at 14-16; RCN at 3-4, 8-9; OpTel at 10; see Bartholdi generally; NRTC at 4, 7-8.

<sup>6</sup> In the Matter Corporate Media Partners d/b/a Americast and Ameritech New Media, Inc. v. Continental Cablevision, Inc. and Home Box Office, a division of Time Warner Entertainment Company, L.P., CSR 4690-P, Memorandum Opinion and Order, rel. July 3, 1996.

cable operators to extract anti-competitive exclusive agreements even from programmers who are not vertically integrated (including television network-affiliated programmers) or who do not distribute their programming via satellite.

Second, the Commission must take steps to ensure that new entrants in the video distribution marketplace have reasonable access to the existing wire on the customer's premises, especially in multiple dwelling unit ("MDU") buildings. Incumbent cable operators simply should not be able to exercise control over access to home wiring in a manner that deprives customers of any meaningful choice for satisfying their demands for video programming. Ameritech New Media has detailed what action the Commission should take to promote competition among video providers to MDU buildings.<sup>7</sup> To the extent the Commission believes it needs additional

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<sup>7</sup> Comments of Ameritech New Media (at 2-3) and Reply Comments of Ameritech New Media (at 2-8), filed Mar. 18, 1996 and April 17, 1996, respectively, In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, MM Docket No. 92-260, FCC 95-503.

authority to carry out this important task, it should include such a discussion in its annual report to Congress on the status of competition in the market for the delivery of video programming.

Respectfully submitted,

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August 19, 1996

**CERTIFICATE OF SERVICE**

I, Edith Smith, do hereby certify that a copy of Reply Comments of Ameritech New Media, Inc. has been served on the parties listed on the attached service list, via first class mail, postage prepaid, on this 19th day of August, 1996.

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